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VIA E-FILING

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Carlsbad Energy Center Project (07-AFC-06C)
Karen Douglas, Commissioner and Presiding Member
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Re: **Carlsbad Energy Center Project, 07-AFC- 06C**
Project Owner's Responses and Objections to Intervenor Rob Simpson's Data
Request Set 1

Mr. Simpson and CECP Siting Committee:

Carlsbad Energy Center LLC ("Project Owner") herein provides the following responses and objections to Intervenor Rob Simpson's Data Request Set 1 ("Data Request Set 1") filed on Oct. 29, 2014 regarding the Carlsbad Energy Center Project ("CECP") Petition to Amend ("PTA").

General Responses and Objections

First, Project Owner objects to Mr. Simpson's data requests because Helping Hand Tools is not a party to the CECP proceeding. Section 1716(b) of the California Code of Regulations authorizes the issuance of data requests. Under this provision, "**any party** may request from the applicant any information reasonably available to the applicant which is relevant...or reasonably necessary..." (20 Cal. Code Regs. § 1716(b).) (emphasis added.) "Party" means "any applicant, respondent, complainant, or intervenor, and the staff of the commission." (20 Cal. Code Regs. § 1201(e).) Mr. Simpson's statement "[w]e continue to review the petitions to modify.." indicates that Data Request Set 1 was filed on behalf of both Mr. Simpson and Helping Hand Tools. (Data Request Set 1 at p. 2.) However, Mr. Simpson's Petition for Intervention, filed on Aug. 7, 2014, requests intervention for Mr. Simpson as an individual only. Furthermore, the Energy Commission Order Affirming Committee Order Partially Approving Rob Simpson's

Petition to Intervene filed on Oct. 30, 2014 (“Energy Commission Order on Petition to Intervene”) approves only Mr. Simpson’s intervention in the CECP proceeding. There is no mention of Helping Hand Tools. Because Helping Hand Tools is not a party to the CECP proceeding, it is improper for Mr. Simpson to submit data requests on its behalf.

Second, Project Owner objects to Simpson’s point in his Clarification of Data Requests filed on Oct. 29, 2014 (“Clarification”) which states “many of my comments appear to be worded in past tense inquiring if actions have been completed, That was not my intent. Specifically requests 31-33, 41-44, 46, 47, and 55, also 56 should include nuclear power in considerations.” (Simpson Clarification at p. 1.) The statement is so vague and ambiguous as to make it unduly burdensome, if not impossible, for Project Owner to discern Mr. Simpson’s intent, let alone respond in any meaningful manner.

Project Owner also objects to Simpson’s request in his Clarification that “[i]f the research associated with the data requests has not been completed, these data requests are a request to complete the research identified in the requests.” (Simpson Clarification at p. 1.) Section 1716(b) of the California Code of Regulations authorizes the issuance of data requests for “information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. All such requests shall include the reasons for the request.” (20 Cal. Code Regs. § 1716(b) (emphasis added).) Mr. Simpson’s request to conduct such research, often on topics not within his approved scope of intervention, conflicts with Section 1716(b)’s requirement that the information requested be reasonably available to the applicant. Furthermore, Mr. Simpson fails to provide any rational reasons for much of the information requested.

Specific Responses and Objections

The specific responses and objections to the data requests set forth below generally note that the information sought is beyond the scope of the Energy Commission Order on Petition to Intervene or does not exist. Where Project Owner indicates that the information sought is beyond the scope of the Energy Commission Order on Petition, Project Owner has concluded that the requested information does not fall under the categories to which Mr. Simpson’s intervention is limited – air quality, greenhouse gas emissions, and public health. Where Project Owner indicates that the requested documentation does not exist, Project Owner has concluded that the data request presumes such document exists but Project Owner has confirmed that no such document has been prepared by or submitted to any party in the CECP proceeding. The following specific responses and objections also set forth Project Owner’s reasoning behind its conclusion that certain data requests seek information not relevant to the CECP proceedings or reasonably necessary to make any decision on the PTA.

BACKGROUND: The amendment application Page 5.1-30 and page 5.1-68¹ indicates that a Prevention of Significant Deterioration (“PSD”) permit will be required for greenhouse gas emissions.

¹ If this PSD delegation to the SDAPCD does not occur in a timely manner, a separate PSD permit application will be submitted to EPA Region 9 for a PSD review/permit for GHG emissions.

DATA REQUESTS:

- 1) Please provide a copy of the PSD permit application submitted to Region 9 for approval of the PSD permit.

Response: Project Owner has determined that no such document exists. The CECP is no longer subject to PSD review and thus no permit application is necessary.

- 2) If a PSD application has not been submitted to the EPA please indicate why it has not and when the applicant intends to submit one.

Response: A PSD application has not been submitted to EPA and Project Owner does not intend to submit a PSD application to EPA because the CECP is no longer subject to PSD review.

- 3) Please provide the project owner's schedule for acquisition of the PSD permit.

Response: Project Owner objects to this data request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA since the CECP is no longer subject to PSD review.

- 4) Please provide all past and future copies of correspondence between the EPA and the project proponent related to this particular PSD permit. This is an ongoing data request.

Response/Objection: Project Owner objects to this data request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA since the CECP is no longer subject to PSD review. Furthermore, to the best of Project Owner's knowledge, no such documentation exists.

- 5) Please provide electronic copies or transcripts of any written or oral correspondence with the CEC staff or CEC Commissioners related to the PSD permit.

Response/Objection: Project Owner objects to this data request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA since the CECP is no longer subject to PSD review. Furthermore, to the best of Project Owner's knowledge, no such documentation exists.

BACKGROUND: The applicant's agreement with the City of Carlsbad provides for a monetary payment if the existing Encina Project is required to operate at the same time the amended Carlsbad Peaker project is operating.²

² See Article 8.4 of the agreement: "(a) Liquidated damages provides that: in the event that CECP becomes commercially operable and the Encina Power Station continues to operate, NRG has agreed to make the liquidated damage payment as provided by section 3.1(A)(VI)."

Data Requests

- 6) Please provide an air quality modeling analysis showing the impact of the 965 MW Encina Power Station operating at the same time as the amended 632 MW Carlsbad project.

Objection: Project Owner objects to this data request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA since it is not physically possible for the Encina Power Station to operate at 965 MW and for the CECP to operate at 632 MW at the same time. Project Owner also objects because the collection of such information would be unduly burdensome since the analysis would be purely theoretical.

- 7) Please provide a health risk assessment assuming that both the Encina Project and the 632 MW Amended Carlsbad project are operating simultaneously.

Objection: Please refer to DR 6.

- 8) Please provide a nitrogen deposition analysis assuming both projects continue to operate.

Objection: Please refer to DR 6.

BACKGROUND: It is likely that the project may be operated continuously or intermittently on natural gas derived from imported liquefied natural gas ("LNG").

DATA REQUESTS:

- 9) Please provide an air quality analysis based on the project utilizing imported LNG.

Response/Objection: Project Owner objects to this data request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA since the potential inclusion of LNG in the gas pipeline system is speculative. Project Owner has no control over the sources of natural gas that may or may not be included within the utility gas pipeline system that will serve the CECP.

Notwithstanding the above, the maximum air pollutant emission rates presented in the PTA would not be affected by the inclusion of LNG in the utility gas pipeline system that will serve the CECP. Consequently, the air quality analysis submitted with the PTA reflects operations and presents impacts that include the effects of LNG that may be included in the utility gas pipeline system that will serve the CECP.

BACKGROUND: SDG&E recently sold a forty-eight acre parcel at the Encina Parcel Site to Caruso Holdings. Caruso plans to erect an upscale mall at the site.

DATA REQUESTS:

- 10) Please identify all projects that will be under construction at the same time as the amended CECP.

Response: The Vista/Carlsbad Interceptor Agua Hedionda Lift Station and Carlsbad Seawater Desalination Plant projects are the only two nearby projects that are expected to be under construction at the same time the Amended CECP could be under construction.

- 11) Please provide a construction air quality impact analysis of all projects that will be under construction during the construction and demolition of the amended CECP. Please include the Carlsbad desalination plant and any other reasonably foreseeable projects.

Response/Objection: Project Owner objects to this data request because the requested information is neither relevant to the proceeding nor reasonably necessary to make a decision on the PTA since the PTA already addresses worst case impacts. As discussed in the PTA, the maximum ambient air quality impacts associated with the construction of the Amended CECP are expected to occur along the project fenceline (specifically along the fenceline on the east side of the project), and the impacts fall off sharply with distance. (PTA at Appendix 5.1F.) Therefore, it is not expected that there will be any significant cumulative construction impacts between the Amended CECP and other nearby construction projects. As discussed in the PTA, a separate ambient impact modeling analysis was not performed for the demolition of the existing El Segundo Power Station because demolition emissions were lower (both daily and annual emissions) compared to the Amended CECP construction emissions. (PTA, Appendix 5.1F.) Consequently, the Amended CECP construction ambient air quality analysis represents worst case impacts.

- 12) The amendment application states "Upon completion of demolition of EPS, portions of the western areas of the Cabrillo Parcel will be removed from CEC jurisdiction and made available for redevelopment." Please describe the impacts from reasonably foreseeable additional development in the analysis of this project.

Objection: Project Owner objects to this data request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA since the air quality impacts associated with the potential redevelopment of the Cabrillo Parcel are speculative at this time. There is not sufficient information available to determine what the Cabrillo Parcel development might be, or what the air quality impacts of that development might be.

BACKGROUND: The petition to amend states that the amended CECP will be constructed in the footprint of several existing fuel oil tanks. Given the known existing contamination near the fuel oil tanks, please provide a schedule for:

DATA REQUESTS:

- 13) Demolition of the fuel oil tanks.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 14) Environmental investigation after removal of the tanks.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

15) Remediation of contaminated soil found near the tanks to a level of insignificance.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

BACKGROUND: The CECP must comply with local, state, and federal laws.

DATA REQUESTS:

16) Please explain how "public convenience and necessity" (as discussed in California Public Resources Code § 25525) requires the capacity and energy represented by the CECP and that there are not more prudent and feasible means of providing this perceived energy need.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

17) Please explain how the CECP facility will comply with Carlsbad Local Ordinance CS-158, Ordinance CS-159, Ordinance CS-160, and Resolution 2011-230.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

18) Please identify the project's "extraordinary public purpose" as defined in Carlsbad Municipal Code 21.36.020.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

19) Please describe how the project is coastal dependent as established by the California Coastal Act (Pub. Res. Code § 30101).

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

20) Please explain whether the project meets the requirement for a thirty-five foot height limitation (Agua Hedionda Land Use Plan Page p. 17, § 1.9; Exhibit 412).

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

21) Please explain whether the waters of Agua Hedionda are waters of the United States as defined in the Coastal Zone Management Act.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 22) Please identify exactly what permits and government approvals – coastal development, air pollution permit, PSD permit, endangered species act take permit, Army Corps of Engineers, California Fish and Game, USFWS, NPDES, etc. – the CEC license would represent. Identify the public participation opportunities, including public notice requirements, for the subsumed approvals, and compare them to the public participation opportunities before the Commission.

Response/Objection: To the extent that this question seeks information not related to air quality, public health, and greenhouse gases, Project Owner objects to this request because the issues are not within the scope of Mr. Simpson's approved intervention. To the extent that this question seeks information related to air quality, public health, and greenhouse gases, the requested information is contained in Table 5.1-16 and 5.9-5 of the PTA, and in the sections of the PTA referenced in those tables. To the extent that this request asks Project Owner to read and interpret the LORS identified in those tables to "identify public participation opportunities, including public notice requirements" and "compare them to the public participation opportunities before the Commission," Project Owner objects to this data request because it is unduly burdensome and the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA.

- 23) Please identify all other government approvals not subsumed by the CEC license that would be required for the project to be developed and operated. Please include application status and expected dates of approval.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 24) What state and federal regulations govern the project's impacts on these waters?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 25) Please identify potential air quality impacts on adjacent endangered species, flora, and sensitive habitats.

Response/Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention. Nonetheless, the requested identification is contained in Section 5.2.3 of the PTA.

- 26) Please discuss whether a No Project Alternative, which is "a factually based forecast of the environmental impacts of preserving the status quo" has been examined (84 Cal.App.4th 315A, *Planning & Conservation League v. Dept. of Water Resources* (2000) at p. 917).

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

BACKGROUND: The Applicant should explain the environmental impacts of the CECP.

DATA REQUESTS:

27) Please provide the most recent two years of on-site air quality monitoring

Response/Objection: Project Owner has determined that no such documentation exists. Additionally, Project Owner objects to this request because the requested information is neither relevant to the CECP proceeding nor reasonably necessary to make a decision on the PTA and the collection of such information would be unduly burdensome.

28) Please provide the most recent two years of on-site meteorological data.

Response/Objection: Project Owner has determined that no such documentation exists. Additionally, Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention and the collection of such information would be unduly burdensome.

29) Based on the information in the two studies conducted by Mark Z. Jacobson, please describe whether your studies of CECP's potential air quality impacts have taken into account the enhancement of local air pollution by urban CO₂ domes.³

Response: The studies of CECP's potential air quality impacts do not take into account "the enhancement of local air pollution by urban CO₂ domes."

30) Regarding the approved combined-cycle project compared to the proposed single cycle project, please prepare a side by side comparison of air pollution and greenhouse gas emissions at varying operating loads.

Response/Objection: To the extent that this request is in the context of Project Alternatives, Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention. An assessment of the feasibility of combined cycle gas turbines as an alternative to the proposed single cycle gas turbines, to the extent that such an assessment is required by air quality regulations, is included in the PTA within Appendix 5.1C.

31) Has the Applicant examined the value of underground carbon sequestration, including the value it might provide in offsetting the cost of participating in the state CO₂ cap and trade scheme as well as the value of increased electricity sales from preferred position in queue? If so, what did the Applicant find?

³ Environmental Science and Technology 2010, 44, 2497-2502, *Enhancement of Local Pollution by Urban CO₂ Domes* by Mark Z. Jacobson (March 2010), and Geophysical Research Letters, Volume 35, L03809, *On the Causal Link Between Carbon Dioxide and Air Pollution Mortality* by Mark Z. Jacobson (February 12, 2008); available at Study the 2 reports by Mark Z. Jacobson, *Enhancement of Local Air Pollution by Urban CO₂ Domes and On the causal link between carbon dioxide and air pollution mortality*. Model the localized impacts consistent with the reports methodology. The reports are available at: http://www.energy.ca.gov/sitingcases/piopico/documents/others/2012-09-11_Simpson_Supplemental_Comments_3_TN-67083.pdf

Response: No, the Project Owner has not performed such an examination.

- 32) Have nearby farm owners and management been surveyed to determine if they would accept heat or carbon dioxide for intensified farming methods? Has the Applicant surveyed nearby farm owners and management to determine under what terms they would participate in algae farming for bio-sequestration of greater amounts of, what would otherwise be, air pollutants? If so, what did the Applicant find?

Response: No, the Project Owner has not surveyed nearby farm owners and management.

- 33) Have heat and cooling users within one mile of the project been surveyed to examine who would accept hot water from the project? Is there a cost benefit analysis that considers increased electrical sales derived from a preferred position in the loading order because of the increased efficiency and environmental benefits?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 34) Please describe how much on site solar could be developed in conjunction with the facility if all practicable surface area on buildings, in the parking areas, and elsewhere on-site are covered by solar panels. How would this lower emissions and effective heat rates?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 35) Please explain whether the effectiveness of varying amounts and types of energy storage can be used to reduce environmental impacts and improve grid stability through smoothing or other advantages.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 36) Please identify the height that the temperature or pollutant emissions from the stacks would result in bird mortality in a collision with the plume. Identify the height at which emissions from the facility would merely disrupt avian flight

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 37) Please explain whether the rapid start turbines startle local birds into flight into the intermittent inferno plumes?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 38) Please identify the distance between proposed electrical wires, identify the wingspan of a typical adult brown pelican, and demonstrate how the distance between the wires prevents avian electrocution and the associated threat to public health.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 39) Has the pollution and potential pollutant accumulation in the lagoon been studied? If so, what were the results?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 40) Please identify the potential impacts to species and habitats including aquatic species by elevated noise and light levels including construction noise, pile driving, and vibrations.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 41) Have greenhouse gas emissions from construction been modelled? If so, please describe what the modelling showed.

Response: Greenhouse gas emissions during project construction are discussed in Appendix 5.1F of the PTA.

- 42) Have any studies been conducted examining the deposition impacts of criteria and toxic emissions on nearby critical habitats including the vernal pools? If so, what were the results of those studies?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 43) Have any studies been conducted examining the impacts of ammonia emissions and the millions of gallons of vaporized water per day on biological resources? If so, what were the results of those studies?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 44) When was the last time the biological assessment was updated utilizing the most recent environmental reports? Is an update to the biological assessment planned?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 45) Please describe the effects of potential raptor perches in the planned tree canopy.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

BACKGROUND: The Applicant should explain the public health impacts of the CECP.

DATA REQUESTS:

- 46) Please provide the results of all research and consideration completed following the disclosure during public comments in the initial proceeding of a cluster of adjacent leukemia/cancer cases and deaths potentially linked to the facility. If the issue was not studied, please explain why not. Also discuss whether any future studies are planned to determine the scope of public health impacts (especially leukemia and cancer clusters) from the amended project and whether it would exacerbate the effects on public health.

Response: The potential risks to public health, including risks of cancer and of non-cancer health impacts, are discussed in Section 5.9 of the PTA.

- 47) Has a survey of the gas pipeline intended to serve CECP been conducted in order to help ensure pipeline safety and help prevent another catastrophe like the one in San Bruno?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

BACKGROUND: Data requests concerning the operation of the CECP.

DATA REQUESTS:

- 48) Please compare the original approved combined-cycle facility with the amended proposal and disclose any requirements from SDG&E that the original facility could not satisfy.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 49) If the operating parameters of the approved facility do not satisfy SDG&E requirements, please identify energy storage or other options that would cause the original plan to satisfy SDG&E requirements. Quantify the cost effectiveness and benefits to the developer of the improved position in the loading order.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 50) Please describe how much renewable capacity the plant would support compared to the current system capacity. Include presently dispatched renewable resources, other proposed gas plants that propose to support renewables, and compare to the original plant's ability to support renewable energy. Explain whether the project is in the best the location to support renewable energy.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

- 51) If the amendment is denied, does the Applicant have full authority to develop the previously approved project? If not, identify any other approvals or permits required to allow that project to proceed and the status of applications.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

52) If the amendment is denied, would the Applicant develop the approved project?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

53) Please disclose all ongoing communication with regulators/government agencies regarding the approval of the amended project.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

54) Is the project considered a Public Utility?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

55) Has a MACT analysis been conducted? If not, why?

Response: Compliance with all applicable federal air quality requirements, including MACT requirements adopted by U.S. EPA and codified at 40 CFR 63, is discussed in Section 5.1 of the PTA.

56) Please describe whether this project will displace less efficient gas plants or renewable energy.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

57) If grid stability requires the facility to operate more than the permitted amount, what will happen?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

58) Please explain whether the project requires an override of LORs.

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.


59) Is the Administrative record from the original proceeding subsumed into this proceeding?

Objection: Project Owner objects to this request because the issue is not within the scope of Mr. Simpson's approved intervention.

60) The Amendment application states "Construction activities for the Amended CECP will involve similar activities as those described for the Licensed CECP in the Final Decision." Please describe the impacts associated with the amended CECP noise, light, runoff, and air emissions.

Response/Objection: Project Owner objects to this request because noise, light, and runoff issues are not within the scope of Mr. Simpson's approved intervention. With respect to air emissions, the requested description is provided in Appendix 5.1F of the PTA.

Locke Lord LLP

By: 

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